TWO
SPEECHES
OF AN
HONOURABLE GENTLEMAN,
ON THE LATE
NEGOTIATION
AND
CONVENTION
WITH
SPAIN.

The SECOND EDITION.

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PRICE

SPEECH

OF AN

HONOURABLE GENTLEMAN

IN THE HOUSE OF COMMONS,

On the Motion for an Addreſs of Thanks to his Majeſty, for communicating to the Houſe the Declaration from Spain relative to Falkland's Iſland.

WEDNESDAY, FEBRUARY 13, 1771.

Motion made by Lord Beauchamp, and ſeconded by Lord Palmerſton.

MR. SPEAKER,

AS the line of my ſervices under his late Majeſty, doth naturally lead me to ſome knowledge of this kind of buſineſs, which is the ſubject of your preſent conſideration; as I have taken ſome pains to collect into a ſeries, the ſcattered and unconnected facts which reſpect the negotiation; I will venture to trouble the Houſe with my ſentiments upon it, both as to fact and opinion.

The conſideration of the matters contained in the papers laid before you, has led a noble Lord * to move an addreſs of thanks to his Ma-

* Lord Beauchamp.

Majeſty, for the communication which he has been pleaſed to make of theſe papers; and to teſtify our ſincere ſatisfaction in the accommodation which his Majeſty has obtained, by the *diſavowal* made, and *reſtitution* promiſed, as thoſe two articles ſtand in the declaration of Prince Maſſerano. The noble Lord, in ſtating the grounds of his motion, has refered very little to the papers which purport to give an account of the negotiation: and indeed, I do not wonder at it, when I ſee how imperfect, how defalcated an account, they do give of that matter. He has grounded the reaſon of his motion on the matter of the convention, as contained in the declaration and acceptance.—He has argued ſolely on the concluſion, as it ſtands in the convention; not as his accurate reaſoning would have deduced it from the preliminaries contained in the negotiation: but, taking it as he finds it, he thinks the diſavowal full up to the reparation demanded; the reparation adequate to the injury received; the ſatisfaction full to the point of honour. This point ſecured, he thinks that the examination of the queſtion of war or peace, ought to turn rather upon the point of prudence as to our ſituation in Europe, than to be urged from motives of ambition in

America. In deſcribing the ſtate of this country, he has given a detail, too true, I am afraid, and too accurate, as to its interior circumſtances: And no Miniſter, long converſant in public affairs, could have given a more extenſive or a more thoroughly conſidered view of our foreign relations and connexions. But I apprehend that the queſtion muſt turn upon other points.

An honourable gentleman * on this ſide of the Houſe, has purſued a very different line in conſidering this matter. He has ſhewn, that if this accommodation or convention, (or by whatever other name you ſhall be pleaſed to call it) were in itſelf never ſo juſt and honourable; yet that the proceſs of it is not, as yet, in that ſtage, which would, with any propriety, juſtify this Houſe in going into any deciſive opinion upon it; much leſs in acceding to any teſtimony of our ſincere ſatisfaction in it. This point, I do flatter myſelf, I ſhall be able to give full conviction of, when I come to ſtate (as I ſhall do) the real hiſtory of the negotiation by which it hath been conducted.

The conſideration of this matter not being in a ſtate of perfection, on account of its not being brought as yet to a concluſion, is ſtated by

 the

* Mr. Dowdeſwell.

the honourable gentleman, as the grounds and reaſon why he would have moved the previous queſtion upon this motion for an addreſs; had it not been, that the moving of a *previous* queſtion, might be invidiouſly conſtrued into a wiſh, or an intention, of avoiding the *main* queſtion of approbation or diſapprobation. He has, therefore, joined iſſue with the noble Lord upon the main queſtion; and has ſtated diſtinctly, propoſition by propoſition*, upon each ſtage of this buſineſs,

* I. That is ſtands *aſſerted* by the Marquis de Grimaldi, and *uncontradicted* by his Majeſty's Miniſters, that the Court of Spain had expreſſed its diſapprobation of his Majeſty's ſettlement at Falkland's Iſland; and that there had been ſeveral diſcuſſions thereupon, between his Majeſty's Miniſters and the Miniſters of the ſaid Court, of ſuch nature as *might give his Majeſty's Miniſters reaſon to foreſee the attack upon that ſettlement*, which was afterwards made by the forces of the Crown of Spain.

II. That Captain Hunt, Commander of one of his Majeſty's ſhips of war, arrived the 3d day of June 1770, and brought information to the Commiſſioners for executing the office of Lord High Admiral of Great Britain, that a Spaniſh Governor, and Commanders of Spaniſh ſhips of war, had *repeatedly warned his Majeſty's forces to quit poſſeſſion of the ſaid ſettlement*.

III. That his Majeſty's Miniſters made *no repreſentations thereupon to the Court of Spain*; and it is notorious, that *no preparations were made for enabling his Majeſty to do himſelf juſtice*, in caſe advice ſhould come that the ſaid ſettlement was taken, and the Court of Spain refuſe his Majeſty that ſatisfaction which he had a right to expect.

IV. That

buſineſs, *matters of fact* ſo ſtrongly confirmed by the evidence of the papers, (broken into fragments, as that evidence now lies upon your table)

IV. That the Marquis de Grimaldi, in his conference with Mr. Harris on the 25th day of September 1770; and the Spaniſh Ambaſſador, in his propoſal, mentioned in Lord Weymouth's letter to Mr. Harris, on the *17th day of October* 1770; did diſavow any *particular orders* given to the Governor of Buenos Ayres, to ſeize by force the ſaid ſettlement; but did acknowledge, that the ſaid Governor had acted under *general orders, according to his oath as Governor, and according to the eſtabliſhed laws of America.*

V. That the diſavowal of the violent enterprize of the Spaniards, and an engagement for the reſtitution of the Port and Fort Egmont, have been accepted *without ſuch cenſure or puniſhment of the Governor of Buenos Ayres, as might make it manifeſt that he did not act under any orders, general or particular;* and without ſuch explanation of his *general orders, as might ſufficiently ſecure his Majeſty's poſſeſſions againſt the like inſult and injury in time to come.*

VI. That the demand of the Court of Spain, that *his Majeſty ſhould diſavow the menaces of Captain Hunt*, which, from the papers laid before this Houſe, is the only apparent cauſe of protracting the negotiation, was unreaſonable and unjuſt.

VII. That though the Court of Spain did refuſe for a long time to do his Majeſty that juſtice which it has ſince confeſſed to be due to him, *no reparation has been demanded for ſuch protracted refuſal*; whereby a new injury was received by his Majeſty, this country has been put to very great expence in preparations for war, its commerce interrupted, and his Majeſty's ſubjects greatly diſtreſſed.

VIII. That the engagement to reſtore *Port and Fort Egmont* is ambiguous, and is ſhort of the *firſt propoſal may by the Spaniſh*

table) that not one ſingle circumſtance *has* been denied; not one ſingle circumſtance *can be* denied. He calls upon the Houſe to go into an accurate

Spaniſh Ambaſſador to Lord Weymouth, which was to reſtore *Falkland's Iſlands*.

IX. That his Majeſty's Miniſters have *not*, in the whole negotiation, aſſerted his Majeſty's *right to Falkland's Iſlands, or any of them*, or to his *ſettlement at Port and Fort Egmont*; but have been ſo inattentive to that right, as to neglect *laying in his Majeſty's claim thereto in oppoſition to the claim of the Catholic King*, aſſerted by the Spaniſh Ambaſſador in his declaration.

X. That in the capitulation for Port and Fort Egmont, the Spaniſh Officer inſiſted *on detaining his Majeſty's ſhip of war*, called the Favourite, till twenty days after the ſailing of one of the frigates under the command of the ſaid Officer; and that to prevent the Favourite's ſailing, *her rudder ſhould be taken off*.

XI. That the detainer of his Majeſty's ſaid ſhip, was an injury for which *no reparation* has been demanded; and taking the rudder from the ſaid ſhip, was an *additional inſult*, highly injurious to the honour of the Britiſh flag, and an ignominy of the groſſeſt nature, for which alſo *no reparation has been demanded*.

XII. That is does not appear by the papers laid before this Houſe, what was the purport of the language held by the Spaniſh Ambaſſador, which induced Lord Rochford on the 21ſt day of December 1770, to give orders *for the immediate recall of Mr. Harris from Madrid*; nor what was the change in the language of the ſaid Ambaſſador, or in any other circumſtances; nor what authentic information of the ſaid Ambaſſador's having orders from his Court to make new propoſals, was received by his Majeſty, which cauſed new orders to be given to *Mr. Harris on the 18th day of January 1771, for his immediate return to Madrid*.

accurate and attentive diſcuſſion of theſe *facts*, before it comes into matter of *opinion* upon the concluſion. He marks openly, fairly, and with candour, the point to which he thinks this enquiry muſt lead. If the evidence ſupports theſe facts, he thinks that the Houſe, inſtead of feeling a ſincere ſatisfaction upon this buſineſs, muſt be impreſſed with ſentiments that will prompt to cenſure; and he hath opened to you the * cenſure which he ſhould move for. He hath

* XIII. That his Majeſty's Miniſters having neglected to make ſuch timely repreſentations to the Court of Spain, as might tend to prevent all occaſion of rupture between the two Courts; having alſo neglected to make ſuch early preparations as were proper and neceſſary for procuring that juſtice, which his Majeſty had a right to expect in caſe of a refuſal of reparation from the Court of Spain; having totally omitted many parts in their original demand, eſſential to the honour of his Majeſty's Crown, and the rights of his people, particularly having neglected to demand ſatisfaction for the affront offered to the Britiſh flag; having neglected afterwards to require any reparation for the very great expences and diſtreſſes incurred by this nation, from the unreaſonable delay of the Court of Spain, in complying with his Majeſty's moſt moderate demands; and having accepted from the Spaniſh Ambaſſador, an engagement to reſtore *Port and Fort Egmont*, when the firſt offer of the Court of Spain was to reſtore *Falkland's Iſlands*; and having accepted the ſaid engagement, with ſaving of the queſtion of the pretended right of the Crown of Spain to the Falkland's Iſlands, without any counter claim on his Majeſty's part; have not ſupported, as by the duty and truſt of

hath avoided, however, to come to any other concluſion at preſent, than that of moving this Houſe to leave out all the latter part of the addreſs propoſed, which goes to an *opinion of the convention*, prior to an *examination* of the *facts of the negotiation*. He wiſhes to thank his Majeſty, for the gracious communication which he has been pleaſed to make of the matter of this buſineſs; and to make a due and grateful return, by giving to his Majeſty the faithful advice of his Commons, upon a diligent, diſpaſſionate, and accurate examination of the ſituation in which it ſtands.

As I had the honour to ſecond this motion, I ſhall endeavour to give ſuch reaſons (in a general line of ſupporting it) as may obviate every objection that has been attempted to be made to it.

In ſtating the facts, I ſhall firſt mark thoſe which relate to the act of hoſtility, the cauſe of this negotiation; next thoſe of the negotiation itſelf; and, laſtly, ſhall ſtate theſe two points on

of their offices they were bound to do, the dignity of his Majeſty's Crown, nor provided for the ſecurity of the rights of his people, but have concluded a convention, inadequate as a reparation of honour, inſufficient and inſecure with regard to the preſent intereſts and future peace of the nation.

on which the convention turned, the diſavowal and the reſtitution.

His Majeſty had been pleaſed *to exert a right*, by taking poſſeſſion of Falkland's Iſland, followed by an exerciſe of ſovereignty, in the eſtabliſhment of a fort. By the exertion of this right, and the affixing the ſovereignty, the honour of the imperial Crown of Great Britain was committed. On occupying this right, by the ſettlement of Britiſh ſubjects, the rights of the Britiſh nation were committed. Let us ſee then how they have been treated.

A Spaniſh Governor, holding delegated powers under a Sovereign in league and amity with Great Britain, reſiſts this right by force. The rights of treaty, and good faith in the execution of thoſe treaties, require that he ſhould have refered the matter to his Sovereign: but, under a claim of right, eſtabliſhed on pretended laws of America, paramount to treaty and good faith, he commences hoſtilities; drives the Britiſh ſubject from his poſſeſſions, and accompanies his act of hoſtility with *a wanton ignominious inſult* on the Britiſh flag, which no circumſtances could juſtify, and which carries the inſult home to the ſovereignty itſelf. He treats the Britiſh ſubjects, exerting this right by com-

miſſion and under authority of the Crown of Great Britain, as doing an act of confeſſed invaſion, as convicted interlopers. By this act of hoſtility, thus exerted, the honour of his Majeſty's Crown, and the ſecurity of the rights of his people become indeed *deeply affected.* This was his Majeſty's juſt ſenſe of it: he demanded immediate reparation. The conduct of ſeeing this demand carried to its effect, was committed to his Miniſters; and the buſineſs of this day is, to enquire how they have executed this moſt important commiſſion, ſo eſſential to the honour of the Crown, and to the ſecurity of the rights of the people.

In conſidering this, I ſhall now mark the facts which relate to the negotiation itſelf. It commenced about the 12th of September. His Majeſty gave orders for the making a demand, that the Court of Spain ſhould *diſavow the act* of its Governor; and that it ſhould *reſtore every thing* to the ſame circumſtances in which they were before the act of hoſtility was committed.

This negotiation, trained on to the 15th of December, under propoſitions made by the Court of Spain, always inadequate, and moſtly inadmiſſible. Although we are told, that Spain

ſhewed,

ſhewed, from the beginning, a diſpoſition to grant every thing which we could, in honour and juſtice, demand; and that there remained no difficulties, but matter of punctilio only: yet, theſe mere matters of punctilio, had ſuch powerful effect on the Engliſh Miniſtry, that the negotiation between his Majeſty's Secretary of State and the Spaniſh Ambaſſador, was frequently interrupted and broken off. It was, from time to time, indeed, picked up again, and continued, by an extra-official miniſterial negotiation between a great Miniſter and the French Agent: but ſuch was the criſis to which this matter of punctilio wrought itſelf, that on the 15th of December, his Majeſty's Secretary of State did not think he could ſafely remain in office conducting that negotiation, unleſs it was brought to ſome point, preciſe and determinate. He therefore, on that day, made four propoſitions to the Cabinet. Theſe propoſitions were rejected; and, on the 18th, he found it neceſſary to reſign his office. What paſſed between that day and the 21ſt, which induced the * Cabi-

* Although they reſiſted the former Secretary, yet it was neither eaſy nor ſafe for our home-bred cabinet to venture to reſiſt a Miniſter fully *informed of the ſyſtem* of Spaniſh politics, and *acquainted with the ſecret* of the buſineſs of Corſica.

net to re-conſider thoſe propoſitions, the papers on your table do not inform you : and yet, it is certain, that ſomething very material muſt have paſſed, becauſe, on that day, *the* 21*ſt*, one of theſe propoſitions was adopted.—Mr. Harris, your Miniſter at Madrid, was recalled. It is publicly reported, as a matter of notoriety, that a letter of Prince Maſſerano, conceived in very ſtrong and deciſive terms, made it neceſſary to bring on this matter again, and brought it to this criſis. Whatever was the *cauſe*, the letter of Lord Rochford, of this date, fixes this *fact*. Thus this matter, which is repreſented to us, as having no difficulties but in mere matters of form, occaſions a Secretary of State to retire from office, and brings the Britiſh Court to an open rupture, actually declared by the recall of its Miniſter. The fact, which the Houſe here will mark, is, that ſo far as reſpects Great Britain, war was determined on, the 21ſt of December.

On the 27th of December, the King of Spain (as the Marquis Grimaldi had informed Mr. Harris he would do) called a Grand Council, to deliberate on the matter in negotiation. At that Council, an ultimate propoſition, of a tenor and ſpirit, which had already been refuſed by the

Court

Court of London, was fixed upon; and the final reſolution of the Council was, that if that *ultimatum* was rejected, war muſt be the immediate reſult. The Houſe will here remark, that on the part of Spain alſo, war was determined upon, the 27th of December.

All negotiation between thoſe Miniſters of Great Britain and Spain, who were commiſſioned to treat, was broken off. The principals in the quarrel, had determined to appeal to arms: whence then came this truce? Here it will be neceſſary to mark the interpoſition of his Moſt Chriſtian Majeſty: but preparatory to this, it will be proper to obſerve, how the kindly ground was firſt laid in England. A ſecret extra-official line of negotiation, has been referred to in this narrative. The thread of this was never broken by punctilios. It was a *preventer* brace, to the main line of negotiation. When that was broken on the 21ſt of December, this *preventer* held on by the confidential extra-official negotiation; and terms of accommodation were on the 22d treated of, between a great Miniſter and the French Agent. This converſation indeed was not *perfectly* confidential; for although it purported to be a free communication of expedients for accommodation, this great

man

man did not inform the French Agent, that Mr. Harris was recalled. If this circumſtance ſhould be denied, I beg to recall to that great man's memory, the very ſtrong terms of reproach which were uſed by this French Agent, when on the 4th of January (by Lord Rochford's acquainting Prince Maſſerano of the recall) this Agent came to the knowledge of the fact.

This kindly ground lying thus in England, his Moſt Chriſtian Majeſty, on the 24th of December, wrote a letter to the King of Spain, informing him of his intentions to diſmiſs his Miniſter, the Duke de Choiſeul: he explained to him the reaſons; laid before him, the internal ſtate of the kingdom; and marked to him, the neceſſity of peace for the preſent.

The diſpatches of the King of Spain which were ſent off in conſequence of the Grand Council I have mentioned, arrived at Paris the 2d of January; and the Duke de Choiſeul being then diſmiſſed, theſe diſpatches came directly into the French King's own hands. He ſaw that the *ultimatum* contained in them was of a nature that would not be received or complied with by the Court of London, and that it could lead only to an open rupture. He therefore did not

forward

forward theſe diſpatches; but, retaining them, wrote back to the King of Spain, ſtating to him the neceſſity of peace, from the impoſſibility of France's entering at preſent into war, in aid and aſſiſtance to him. In anſwer to which, the King of Spain referred himſelf wholly to the King of France; put his honour into his hands; and gave him full powers to conclude for him: deſiring him to act exactly as if it was his own caſe; only to remember, that he had the charge of the Catholic King's honour, which was dearer to him than all his dominions, and even than life itſelf.

His Chriſtian Majeſty being thus veſted with full powers from Spain, and matters being thus prepared in England, he forms the terms of the concluſion; and ſends them hither to *his* Miniſter, to be communicated to the *Spaniſh* Miniſter: but ſends, at the ſame time, to Monſieur de Guiſne a letter, ordering him to adhere ſtrictly and cloſely to the Family Compact; and if the Spaniſh Miniſter ſhould be recalled, to come away himſelf without delay. This letter was an oſtenſible one, which Monſieur de Guiſne had private orders to ſhew to our Miniſtry, previous to communicating the terms of the accommodation.

Theſe

Theſe diſpatches arrived on the 14th of January. Prince Maſerano, notwithſtanding every deference to, and the moſt profound reſpect and reverence for, his Chriſtian Majeſty, yet finds himſelf in a predicament of reſiſting thoſe directions of the King of France: firſt, as they were contrary to, or at leaſt incongruous with, the prior inſtructions which he had received from his own Court: next, as he might have reaſon to apprehend that, notwithſtanding the full powers which France had to conclude this matter, theſe full powers might be revoked by the Spaniſh Court, when they came to be informed of the recall of Mr. Harris: and laſtly, that as the negotiation between him and the Britiſh Secretary of State was broken off, and Mr. Harris actually recalled, he could not negotiate upon any terms.

Theſe difficulties laſted from this time to the 18th. On that day (the 18th) our Miniſtry determined to give him ſatisfaction, by remanding Mr. Harris back to Madrid. For which purpoſe, on that day, four or five meſſengers were ſent different ways in order to meet him. Lord Rochford's letter of that date gives as a reaſon for this, that his Majeſty, from the information he had received, had *reaſon to believe*

lieve that Prince Maſerano had orders to make freſh propoſals. Surely this was but a poor reaſon for making ſo eſſential an alteration in the ſyſtem of our buſineſs, merely on a ſuggeſtion that Prince Maſerano (who, for four months together, had been making propoſitions always inadequate and moſtly inadmiſſible) had now freſh orders to make *ſome other* propoſitions. But the information which our Court had, gave them ſufficient intelligence what thoſe propoſitions were; and if they had been pleaſed to lay that information before this Houſe, this Houſe *would* have ſeen *from whence it came*: But that part of information as to this buſineſs is *not* laid before us.

As to the other difficulties of Prince Maſerano, they are ſaid to have been adjuſted, by the French Miniſter's giving him in writing, aſſurance of his Chriſtian Majeſty's having full powers to conclude this buſineſs; and alſo a juſtification or indemnification for his doing it, under thoſe directions. Upon this ground the matter was concluded on the 22d of January; the very day that Parliament met, and about an hour before it did meet.

Had the ſigning of this matter been deferred two or three days, that is, till Friday the 25th,

it could not have been ſigned at all; for on that day Prince Maſerano received his recall; ordering him to come away, without taking leave.

Now, Sir, is the buſineſs of this accommodation, ſigned, *not by Spaniſh orders*, but *under French directions*; ſigned at a time when the powers given for concluding this matter ſtand actually revoked; when it is not known whether this concluſion will be adopted and confirmed by the King of Spain; at a time when the Spaniſh Ambaſſador ſtands recalled, and does no more go to Court.—Is this a ſtage of the buſineſs, either for this Houſe to go into an approbation of it, or to go up to his Majeſty with thanks for it, as a matter concluded? And if it ſhould not be accepted by Spain, would even Miniſtry itſelf wiſh to make ſo ridiculous a figure as they muſt do, in having induced Parliament to approve a meaſure the very contrary of what it may turn out in the event!

It will be here obſerved, that this buſineſs has been conducted in two different lines of negotiation; the one diplomatic, reſponſible, upon paper; the other miniſterial, irreſponſible, on parole: the one conducted officially on the part of his Majeſty's Secretary of State, by a one uniform,

uniform, unremitted demand, (ſuch as it was) urged with ſpirit, and broken off with ſpirit: the other, by a great man, in an extra-official way, picking up a broken thread of negotiation, and holding on a kind of ſpliced and knotted treaty, by accommodation with a French Agent. Although the King of France is not admitted, on either ſide, as the mediator avowed; although the Miniſter of this country did publickly *diſavow* all mediation; yet it does appear, that the Court of France was permitted to interpoſe: and having, as it were, put both England and Spain in arreſt, did finally *dictate the terms of their accommodation.*

We are told that this negotiation was, as all demands of honour ſhould be, ſimple and peremptory; that it conſiſted but of two words invariably adhered to, DISAVOW and RESTORE. Let us therefore conſider it on theſe two points.

It diſavows indeed that this particular expedition was undertaken and carried on under any *eſpecial* orders for it; but at the ſame time ſays, that the Spaniſh Governor *was juſtifiable*, and *does juſtify* him, in having undertaken this expedition, by virtue of the powers of his commiſſion, his general inſtructions, and the eſtabliſhed laws

of America. SUCH DISAVOWAL, accompanied with a claim of right to juſtify the Governor, in having commenced hoſtilities under the circumſtances and principles referred to, is an inſult inſtead of a diſavowal. The claim of any ſuch right, on any ſuch principles, is contrary to every treaty by which we ſtand in league and amity with the Court of Spain; is directly contrary to that good faith with which his Majeſty and his anceſtors have ever executed thoſe treaties. By thoſe treaties, the Sovereigns at peace with each other, muſt be reſponſible that thoſe who act under their delegated powers ſhall obſerve that peace: and it is expreſsly ſtipulated, that they *ſhall not* commence hoſtilities without reference to their Sovereigns, and without receiving their eſpecial commands thereupon. If any of his Britannic Majeſty's Governors in America had committed any act of hoſtility of this kind; that act would have been criminal, as *not juſtifiable*, nor *to be juſtified*, by their powers of government; and as being directly contrary to their inſtructions. Thoſe * Charters in which delegated powers

CONNECTICUT.

* Nevertheleſs our will and pleaſure is, and we do hereby declare unto all Chriſtian Kings, Princes, and States, That if any perſons, which ſhall hereafter be of the ſaid company

powers of government are granted, have all uniformly a clauſe reſtraining thoſe who live and act under thoſe powers, from doing any act of hoſtility againſt

company or plantation, or any other, by appointment of the ſaid Governor and Company, for the time being, ſhall at any time or times hereafter, rob or ſpoil, by ſea or by land, and do any hurt, violence, or unlawful hoſtility, to any of the ſubjects of us, our heirs or ſucceſſors, or any of the ſubjects of any Prince or State, being then in league with us, our heir or ſucceſſors, upon complaint of ſuch injury done to any ſuch Prince or State, or their ſubjects, we, our heirs and ſucceſſors, will make open proclamation within any parts of our realm of *England*, fit for that purpoſe, That the perſon or perſons committing any ſuch robbery or ſpoil, ſhall, within the time limited by ſuch proclamation, make full reſtitution or ſatisfaction of all ſuch injuries done or committed; ſo as the ſaid Prince, or others ſo complaining, may be fully ſatisfied and contented: And if the ſaid perſon or perſons, who ſhall commit any ſuch robbery or ſpoil, ſhall not make ſatisfaction accordingly, within ſuch time ſo to be limited, That then it ſhall and may be lawful for us, our heirs and ſucceſſors, to put ſuch perſon or perſons out of our allegiance and protection; and that it ſhall and may be lawful and free for all Princes and others to proſecute with hoſtilities ſuch offenders and every of them, their and every of their procurers, aiders, abettors, and counſellors in that behalf.

RHODE ISLAND.

Alſo our will and pleaſure is, and we do hereby declare unto all Chriſtian Kings, Princes and States, That if any perſon, which ſhall hereafter be of the ſaid company or plantation, or any other by appointment of the ſaid Governor and Company, for the time being, ſhall at any time or times hereafter, rob or ſpoil, by ſea or land, or do any hurt,

againſt any Prince or State, or their ſubjects, who are in league and amity with the Crown of Great Britain, under pain of being put out of his Majeſty's protection. Thoſe who act with powers of government immediately under his Majeſty's *

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hurt, or unlawful hoſtility, to any of the ſubjects of us, our heirs and ſucceſſors, or any of the ſubjects of any Prince or State, being then in league with us, our heirs and ſucceſſors; upon complaint of ſuch injury done to any ſuch Prince or State, or their ſubjects, we, our heirs and ſucceſſors, will make open proclamation, within any parts of our realm of England, fit for that purpoſe, That the perſon or perſons, committing any ſuch robbery or ſpoil, ſhall, within the time limited by ſuch proclamaion, make full reſtitution or ſatisfaction of all ſuch injuries done or committed, ſo as the ſaid Prince, or others ſo complaining, may be fully ſatisfied and contented.

PENSYLVANIA.

Nor ſhall the ſaid William Penn, or his heirs, or any other the inhabitants of the ſaid province, make war, or do any act of hoſtility againſt any other King, Prince, or State, or any of their ſubjects, who ſhall then be in league or amity with us, our heirs or ſucceſſors.

* Standing inſtruction to his Majeſty's Governor.

76. You are not to grant commiſſions of mark or *repriſal*, againſt any Prince or State, or their ſubjects, in amity with us, to any perſon whatſoever, without our *eſpecial command.*

90. Provided always, that you do not, by colour of any power given you, commence or declare war, without our knowledge and particular commands, except it be againſt the Indians, &c.

commiſſion, hold thoſe powers reſtricted by ſpecial inſtructions to the ſame point. His Majeſty's ‡ Commanders, in the very caſe now in event, act under ſpecial inſtructions, *not* to proceed to acts of hoſtility; but, warning off any perſons whom they may find on the iſland, they are ordered to refer the matter to his Majeſty, for his eſpecial directions therein. The * *Spaniſh* Go-

‡ Extract from a letter of Lord Viſcount Weymouth to Mr. Harris, September 14, 1770.

I alſo ſaid, that I knew that his Majeſty's inſtructions to the officer who made the ſettlement at Port Egmont, and to thoſe who have ſucceeded him in that command, were, to warn the ſubjects of other powers (if any ſuch were found there) to withdraw themſelves from thence; but that I knew, that thoſe inſtructions did, at the ſame time, direct that officer to make a joint ſettlement with the ſubjects of any European powers he might find there, if they refuſed to depart upon proper warning given, *refering the diſcuſſion of right to their reſpective Sovereigns.*

* Extract from a letter of Don Ignacia Radariaga, the Spaniſh Commander, to the Captains Farmer and Maltby, 9th June, 1770.

Your letters are reduced only to warn me to quit this fort, ſtrengthening your reaſons to juſtify the right you have of poſſeſſing the new eſtabliſhment. Notwithſtanding all you have expreſſed, I nevertheleſs confirm what I have written in the adjoined, becauſe your figured reaſons and rights do not appear ſufficient.

Was I a Spaniſh Ambaſſador in London, I would demonſtrate the juſt and legal titles of my Sovereign to theſe iſlands,

Governor, rejects all terms of reference, commences hoſtilities, and ſtands juſtified by his Court. That treaty which, in the courſe of its negotiation, recognizes this juſtification, leads to matters of the utmoſt importance and danger. This is a point which will require the diſtinct conſideration of this Houſe; and I hope, in a few days, to move them thereto.

As to the RESTITUTION, it is, in the firſt place, *leſs* than Prince Maſſerano firſt offered. * He offered the reſtitution *of Falkland's Iſland*. Our Miniſters have accepted the reſtitution of Fort and Port Egmont only. It is, in the ſecond place, a reſtitution of leſs than they demanded.‡ They demanded the reſtitution of every thing, preciſely in the ſame circumſtances in which

iſlands, and lands of Magellan; but this does not belong to this day.

Extract from the ſame, dated as above.

If you will give authentic proof, that you will quickly, and with good will, abandon your ſettlements, &c. I will put with peace and quietneſs my troops on ſhore; but if, contrary to all expectations, you ſhould be determined to maintain your new eſtabliſhment, I will avail myſelf of the forces under my command.

* Vide letter from Lord Viſcount Weymouth to Mr. Harris, 17th of October, 1770.

‡ Vide ditto.

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they ſtood before the act of hoſtility.—Before the act of hoſtility, his Majeſty had exerted a right of poſſeſſion *to the whole iſland*; and affixed the ſovereignty of the Crown of Great Britain to it. Neither the poſſeſſion nor ſovereignty of the iſland is reſtored.—The Port and Fort only, by excluſive, defined words, are reſtored—the ſovereignty lies buried in diſgrace—the exertion of our right is extinguiſhed—and we are come now to the *queſtion* of right—the points of vacancy and occupancy, poſſeſſion and ſovereignty, being abandoned. This kind of excluſive reſtitution comes from the ſame mould, and is of the ſame ſpirit, as the ceſſion of Annapolis Royal in Acadia; which was ſuppoſed to exclude the country in which it ſtood, and to which it affixed the mark of ſovereignty. This reſtitution *purports* the ſame, and will have the ſame effect as that, which did on this very point, mix in with the cauſes of future war; and this will certainly lead to the ſame unhappy end.

I have now gone through my obſervations, and have, I think, fully proved, that this buſineſs ends in *an inconcluſive Spaniſh convention*, dictated by *French arbitration*; in which the *diſavowal* becomes an additional in-

jury; and the *reſtitution* a ſnare, which lays a train for future war: and therefore, I muſt give my voice for the motion, which propoſes to leave out all that part of the addreſs that goes to the giving of any approbation to the late negotiation, until the matters, on which it ſtands, ſhall be more fully diſcuſſed; until it be known, what ſhall be the event of it in fact; and until it ſhall be manifeſt in its effect, that it will juſtify that ſatisfaction which we are taught to feel, and are called upon to expreſs.

ANOTHER

ANOTHER

SPEECH

OF THE SAME

HONOURABLE GENTLEMAN,

On bringing forward the Conſideration of the Conſequences of the late Negotiation with Spain.

TUESDAY, MARCH 5, 1771.

MR. SPEAKER,

AS his Majeſty has been pleaſed to lay before this Houſe the King of Spain's recognition of the convention ſigned at London, containing his orders for the execution thereof, by the delivery of Fort and Port Egmont, I muſt beg that that paper be read after firſt reading Lord Weymouth's letter to Mr. Harris, dated October 17, 1770.*

Papers read.

As

* A copy of a letter from Lord Viſcount Weymouth, to Mr. Harris, dated St. James's, 17th of October, 1770. (Number XI.) ſent by Potter.

SIR, *St. James's, 17th October*, 1770.

I RECEIVED on the 18th inſtant, your letters of the 28th paſt, by Potter, and I have ſince received your letters, No. 57 and 58, by the poſt.

As the matter of the late negotiation could not be ſaid to be compleat until this paper was received, I beg leave now, before I enter into my argument

Prince Maſſeran has propoſed a convention, in which he is to diſavow any particular orders given to Monſieur Bucarelli, upon this occaſion, at the ſame time that he is to acknowledge, that he acted agreeably to his general inſtructions, and to his oath, as Governor. He is further to ſtipulate the reſtitution of Falkland's Iſlands, without injury to his Catholic Majeſty's right to thoſe iſlands, and he expects that his Majeſty is to diſavow the menace of Captain Hunt, which he ſays give occaſion to the ſteps taken by the Spaniſh Governor.

This is the ſubſtance of the propoſed convention, which Prince Maſſeran told me he had full powers to execute. The report which I made to the King, of a propoſition ſo inadequate to the ſatisfaction demanded and expected, gave his Majeſty great ſurpriſe and concern, as every delay throws new difficulties in the way of that amicable accommodation of this affair, which he has moſt ſincerely at heart. I was ordered to tell the Spaniſh Ambaſſador, that when the King's moderation condeſcended to demand of the Court of Madrid, to diſavow the proceedings of the Governor of Buenos Ayres, and to reſtore things preciſely to that ſituation in which they ſtood before the raſh and unwarrantable undertaking of the Governor, as the ſmalleſt reparation for the injury received that he could poſſibly accept, his Majeſty thought there was nothing left for diſcuſſion, except the mode of carrying that diſavowal and that reſtitution into execution ; I was alſo ordered to ſay, that his Majeſty adheres invariably to his firſt demand ; and that without entering into the ſurmountable objections to the *matter* of this propoſed convention, the *manner* alone is totally inadmiſſable, for his Majeſty cannot accept, under a convention,

argument upon this buſineſs, to ſtate in one point of view, the whole and compleat matter which forms this convention, together with his Catholic Majeſty's recognition and execution of it.

The

tion, that ſatisfaction to which he has ſo juſt a title, without entering into any engagements in order to procure it; that the idea of his Majeſty becoming a contracting party, upon this occaſion, is entirely foreign to the caſe; for having received an injury, and demanded the moſt moderate reparation of that injury his honour will permit him to accept; that reparation loſes its value, if it is to be conditional, and to be obtained by any ſtipulation whatſoever on the part of his Majeſty.

Having executed his Majeſty's commands to this effect, his Excellency told me, that he had no power to proceed in this affair, except by convention, and that he muſt ſend to Madrid for further inſtructions; I am therefore commanded to ſignify to you his Majeſty's pleaſure, that you wait upon Monſieur Grimaldi, without loſs of time, and that laying the whole of this matter fairly before him, as I have ſtated it, you demand a communication of his Catholic Majeſty's anſwer, which you will immediately tranſmit to me for his Majeſty's information.

I am, &c.

Weymouth.

Tranſlation of his Catholic Majeſty's orders, ſignified by the Balio Fray Don Julian de Arriaga, to Don Philip Ruez Puente, dated Pardo, 17th of February 1771.

IT being agreed between the King and his Britannic Majeſty, by a Convention ſigned at London on the 22d of January laſt paſt, by the Prince of Maſerano and the Earl of Rochford,

The *declaration* of the Spaniſh Miniſter ſtates that *things* ſhall be reſtored *in* the Malouine, *at* the Port called Egmont, preciſely to the ſtate in which they were before the 10th of June.

The *acceptance* of Lord Rochford, underſtands and recites the declaration as containing terms of a *very different and more extenſive* nature, viz. that Prince Maſſerano *does engage* that *all things* ſhall be immediately reſtored to the preciſe ſituation in which they ſtood before the 10th of June.

His Rochford, that the Great Malouine, called by the Engliſh Falkland Iſland, ſhould be immediately replaced in the preciſe ſituation in which it was before it was evacuated by them on the 10th of June laſt year; I ſignify to you, by the King's order, that as ſoon as the perſon commiſſioned by the Court of London ſhall preſent himſelf to you with this, you order the delivery of the Port de la Cruſada or Egmont, and its fort and dependencies to be effected; as alſo that of all the artillery, ammunition, and effects, that were found there, belonging to his Britannic Majeſty and his ſubjects, according to the inventories ſigned by George Farmer and William Maltby, Eſqrs. on the 11th of July of the ſaid year, at the time of their quitting the ſame, of which I ſend you the encloſed copies, authenticated under my hand; and that as ſoon as the one and the other ſhall be effected, with the due formalities, you cauſe to retire immediately the Officer and other ſubjects of the King which may be there. God preſerve you many years.

Pardo, 7th Feb. 1771. (Signed)

The Bailio Fray Don Julian de Arriaga.

To Don Philip Ruez Puente,

His Catholic Majeſty, in his orders for the execution of what he calls, *this convention*, recites, that the engagements contained in it, are for the repoſition of the iſland *Great Molouine*, in the ſituation in which it ſtood before the 10th of June: yet his orders extend only to the reſtoring of Port and Fort Egmont, with all its ammunition, ſtores, and * apurtenances, juſt in the terms in which a lawyer would convey a cottage; ſo that *if* our Court underſtood that this convention went to engagements for the reſtoring *Falkland's Iſland*, which the *Spaniſh Miniſter offered*, the convention is not by theſe orders fulfilled and executed.

This fluctuation of terms and proceedings in the negotiation, marks not only the true ſpirit, but the wiſdom of his Majeſty's orders, (which Lord Weymouth's letter declares his Majeſty would invariably adhere to) *that no convention under any conditions ſhould be accepted*: and yet the act contained in the two papers, the *declaration* and *acceptance* is both in name and thing, a *Con-*

* The office tranſlation given to Parliament, tranſlates the word *pertinencias*, by a term which ſhould have been inſerted in the order viz. *dependencies*, which is a term that goes to command and ſovereignty: the word which expreſſes the latter, is *dependencias* and not *pertinencias*.

vention

vention; entered into by two contracting parties, under conditions aſcertained by a proteſt as to the queſtion of right, and convening in a point to be executed by his Catholic Majeſty. His Catholic Majeſty executes it (putting his own interpretation upon it,) only, *in part*, by giving thoſe orders which have been now read to you.

The preamble to the order recites, that the convention engages for the repoſition or reinſtating the iſland in the preciſe ſituation in which it was before the evacution; and yet the orders given, are for the reſtoring *of the Fort and Port only*. The preciſe ſituation in which our Court muſt underſtand it to have been, was, that our eſtabliſhment extended to the *poſſeſſion*, and the *ſovereignty* of the iſland. The Fort therefore ſhould have been reſtored under that idea; but it is reſtored under an idea excluſive of both poſſeſſion and ſovereignty.

The convention, by the proteſt inſerted in it, conſiders * the queſtion of right as a matter ſtanding

* It may not be amiſs, as example operates ſtronger than precept, to annex the hiſtory and caſe of the iſland St. Lucie. The Engliſh had a right, and actual poſſeſſion, acknowledged by the treaty of Breda, and confirmed by ſucceeding treaties down to that of Utrecht. In the year 1718 and 1719, the French ſet up a pretended title to it; and

ing referred, to be hereafter diſcuſſed. And the point on which the contracting parties convene at preſent is, to put all things in ſuch a ſituation, that they may come to that queſtion, preciſely as if no act of hoſtility had been done. See then how the claim of each party ſtood, *before* that act of hoſtility, which drove us from our poſſeſſions.

We

and the French King made a grant of it to the Mareſchal d' Eſtrees. Upon the Mareſchal's projecting a ſettlement there, the Court of Great Britain objected to it. The Regent agreed that the ſettlement ſhould be ſuſpended until the the right could be aſcertained. At the ſame time the Britiſh Court thought ſome act of ſtate neceſſary, in order to fix ſome mark of notoriety to the Britiſh right. A patent grant of the iſland was therefore made to the Duke of Montague in 1720; in 1722 his Grace made a ſettlement; in 1723, this ſettlement was driven off by force, but capitulated under an article, that every thing, as to right, ſhould remain preciſely in the ſame circumſtances as it did before this act. And that their evacuation of the iſle ſhould no way effect the queſtion of right. The execution of the matters ſtipulated for in this treaty trained on to 1731, when it was agreed that the ſubjects of both nations ſhould evacuate the iſland, under a ſuſpenſion of the queſtion of right. Ces ordres (ſay the French) fixent le dernier etat de l' iſle de Sainte Lucie.——Here mark the uſe made of this ſtate of the buſineſs. The treaty of Aix-la-Chapelle requires that all rights and poſſeſſions ſhall ſtand as they did before the war. The French ſay they had a right to St. Lucie: that this was indeed interrupted by the pretence of a Britiſh right: that they agreed to ſuſpend the exertion of their right, in order to give the Britiſh Court the means of making

We claim a *right*, from priority of diſcovery and occupancy. In the exerciſe of this, his Majeſty makes a ſettlement, and affixes the ſovereignty of the Imperial Crown of Great Britain to it. The Spaniards on the other hand claim under *a Papal grant* all lands and iſlands diſcovered, or that ſhall be diſcovered, within general indefinite deſcriptions of parcels of the globe. If therefore the iſland is not reſtored to us under thoſe *actual* circumſtances of poſſeſſion and

good the ground of their claim: that this claim never was made good: that the war enſued: that peace fixed all rights and poſſeſſions as they ſtood before the war: that St. Lucie, therefore, both by poſſeſſion and right became French. *Here a pretenſion of right, by a Britiſh conceſſion, ſubmitting its prior right to diſcuſſion, is wrought up into an actual right.* Thoſe who ſee here the conſequences drawn from the Court of Great Britain's ſubmitting any right to enquiry and diſcuſſion, under conditions that no actual right and poſſeſſion of the one party, nor any ceſſion of the other, ſhall effect the queſtion of that right; thoſe who ſee the uſe made of ſuch conceſſions, will or ought to take care upon what grounds they ſuffer that queſtion to be ſtated, leſt they permit themſelves to be brought to the queſtion under circumſtances which ſtrip their claim of its rights on one hand; and give to the pretenſion on the other rights, which do not belong to it. Our negotiators muſt ſee that they have joined iſſue upon the caſe not fairly ſtated. As it is agreed for the preſent not to decide this point by arms; and as it ſtands referred to negotiation; our Miniſters will have time, and will not want occaſions to amend it.

and ſovereignty as we claim it, the *ſuppoſed* poſſeſſion and ſovereignty of the Spaniards, aſſumed in virtue of an ideal juriſdiction derived from the Pope, muſt take place; and the queſtion is prejudged. On the other hand, by reinſtating the crown of Great Britain * *in ſuch poſſeſſion* and ſovereignty as it claims to have held; proteſting the mean while that ſuch repoſition or reinſtating ſhall not effect the queſtion of the actual *right*, as it ſhall or may be made good, the queſtion would ſtill remain open. But if it ſhall prove in the event, that the Spaniſh Court will not come to the queſton of right in this view of it, and that we cannot join iſſue in the other without betraying our rights, then this buſineſs will train on juſt as all negotiations have done, and will end juſt as all ſuch conventions have ended, not in ſecuring peace, but in giving future occaſion, for war†.

Before

* Not ut poſſideret ſed ut in poſſeſſione eſſet, eſt autem longe diverſum: aliud eſt enim poſidere aliud in poſſeſſionem eſſe.

Pomponius in Digeſt. 44. lib. 2. § 10.

† The editor in this note continues the narrative of the negotiation to the period of April 20. Our negotiators deſired only a diſavowal; and accepted a reſtitution of Port and Fort Egmont only, and excluſively. As a condition whereon

Before I enter into the further ſtating of this buſineſs, I will beg leave to recapitulate how far this Houſe hath already gone in its deliberations on this matter.

His

to obtain this requeſt, they ſaid that the obtaining it "would "put it in his Majeſty's power to ſuſpend thoſe preparations "which under the preſent circumſtances his honour will "not permit him to poſtpone." *Lord Weymouth to Mr. Harris, September* 12, 1770, *and Mr. Harris to the Marquis de Grimaldi, September* 25, 1770. The French, who obtained for us the convention concluded on the 22d of January, about the middle of February, brought forward the demand of our diſarming. The Spaniards who have other views, neither diſarmed themſelves, nor interfered at all upon the point, whether we diſarm or not; however, by the intervention of the French, there were ſome converſations about the mode, time, and extent of this diſarming. Yet it was no point demanded by Spain.

The Spaniard who thinks *he has a right to underſtand*, that we do not mean to proſecute the meaſure of taking poſt on Falkland's Iſland; and that as ſoon as we were put in *honourable poſſeſſion of it*, in which the orders for its delivery put into our hands does place us; who *thinks he has a right to underſtand* that we are to withdraw, in claim and deed, from it; did about the latter end of February, intimate to Mr. Harris the intentions of the Spaniſh Court, to require us to fulfil our engagements *as they were mutually underſtood*. Notice of this from Mr. Harris arrived here about the ſixth of March. On Saturday the 9th in the night or early in the morning, a Spaniſh Meſſenger brought orders to Prince Meſſerano to to make a poſitive demand of an immediate ceſſion. Report ſays, that the contents of this meſſage were not communicated to the French Miniſter 'till Monday or Tueſday; on which ſome diſſatisfaction was conceived. A delay of a few days intervened before this was opened to our Miniſter.

Thoſe

His Majeſty having been pleaſed, when the convention was entered into, to lay before this Houſe the two parts of which it conſiſted—The declaration of the Spaniſh Miniſter, and the acceptance by which his own Miniſter declared he had received ſatisfaction—His Majeſty was then pleaſed to ſubmit to the conſideration of this Houſe, the ſatisfaction which he had accepted, by the *diſavowal made*, and *reſtitution*

Thoſe who are curious obſervers, have marked the purchaſes and ſales, the purchaſers and ſellers of ſtock during this period. On Thurſday the 14th, a conference was held with Lord Rochford, who anſwered with the ſame ſpirit with which he had acted throughout. Upon this, Meſſengers were diſpatched to France and Spain. The return from Paris was civil, holding the ſame language of peace; the ſame determination however, at all events of adhering to the family compact. The concluſive anſwer from Spain, did not arrive till April 20th. It is underſtood that Spain and Great Britain are ſo far mutually to ſuſpend their armaments, or to diſarm to ſuch a degree, that all appeal to arms on this point is for the preſent laid aſide. Spain may for the preſent ſuſpend, but does not recede from their demand *of the ceſſion* of Falkland's Iſland. Great Britain, on the the other hand never can cede it. Spain will invariably conſider the continuance of the Britiſh poſſeſſion there, as a continued invaſion, uſurpation, and hoſtility. Great Britain cannot diſcontinue that right and poſſeſſion, unleſs our Miniſters can ſeparate the ſpecial caſe of that iſland, from the general claim which we make, and from the general rights we hold, under the law of nations; or unleſs they mean to give an explicit comment on this negotiation, by *an act of direliction*.

titution promiſed on the part of the Spaniſh Miniſter.

The honour of the Imperial Crown of Great Britain being repoſed in his Majeſty's hands, it is the duty of his faithful ſubjects to follow his ſenſe of it. They did ſo unanimouſly, when he ſaid that it was deeply affected: and they do moſt anxiouſly hope that his Majeſty may not be diſappointed, while he thinks that he has received ſatisfaction on thoſe points.

A majority of this Houſe, in which, according to the forms of Parliament, the whole Houſe is included, went ſome ſteps farther, and expreſſed their intire ſatisfaction on the concluſion of this matter: a conſiderable body of gentlemen not thinking that they had the opportunity given to them of examining the facts and the nature of the negotiation; not conſidering the buſineſs as then concluded; were not able to conceive that ſatisfaction, which others felt and expreſſed.

That matter being *now* decided, and peace between the Crowns of Spain and Great Britain being *now formally* reſtored; and ſtanding as it does, and as it muſt do for the future *on the baſis of this convention*, the execution of which is laid before us; it becomes the duty of every

Member

Member of the community, of every Member of this Houſe, to unite their aid and aſſiſtance, and advice alſo where that ſhall become proper, to give ſtability, ſecurity, and permanency to this foundation. If there be any thing which appears ſuſpicious or defective, either in the ground on which it ſtands, or in the materials of which it is compoſed, it becomes a conſequence of that duty, to point out that defect, ſo that it may be repaired before it is too late. It is in this view that I ſhall offer the conſideration of ſome matters to the Houſe; and it is under theſe hopes, that, with the leave of the Houſe, I ſhall conclude with a motion that will point theneceſſity of future attention, in conſequence of paſt neglect.

By the law of nations, all ſovereign ſtates are reciprocally reſponſible to each other for all delegated and ſubordinate powers, deriving from or exiſting under their reſpective ſovereignties: they are bound to reſtrain thoſe ſubordinate powers from commencing hoſtilities on their own opinion, or of their own motion, on any occaſion whatſoever, whilſt their Sovereigns continue in league and amity: without this, peace would be a baſeleſs fabric, a mere viſion; or if it had any exiſtence, would exiſt as a

ſhare

ſnare to thoſe who acted under it with good faith. We may have heard of treaties with hords of Tartars or tribes of Indians; under which, individuals think themſelves no further bound than as they perſonally accord: but without this preliminary ground, there cannot be even a ſuppoſition of ſuch treaties exiſting between civilized ſtates. Where one Sovereign, acting with good faith, under this principle, is leagued with another Sovereign who permits his ſubordinate Governors to act as if unreſtrained by the ſame principle, the ſubjects of the former would be precluded from uſing their own natural power of defenſe; would be denied that protection of their own government which every ſubject has a right to expect; and unarmed, defenceleſs, and unprotected, would be betrayed to the caprice and violence of the ſubjects of the other ſtate. Under ſuch a predicament no rights of poſſeſſion could be exerted, no actual poſſeſſion ſecured, no ſettlements made, no poſts taken for the protection of ſuch rights, poſſeſſion, and ſettlements.

This principle is, and of neceſſity muſt be the preliminary ground of all treaties between civilized ſtates: but from the ſpecial and peculiar ſituation in which Spain ſtands with other

European

European nations, relative to its claims in America; from the actual ſtate of war in which the ſubjects of Spain and of other European nations were engaged in America, prior to ſuch treaties; it became abſolutely neceſſary that this principle ſhould not only be conſidered as the preliminary ground of treaty, but ſhould be inſerted as *an actual article* in the body of all treaties with Spain, reſpecting rights and poſſeſſions in America. It was found neceſſary, in order to meet that claim of poſſeſſion which they ſet up to the dominion of South America; that claim of right which they ſet up to an excluſive navigation in the Soutn ſeas; in ſhort, to the dominion which they claim, over every thing to the ſouthward of the Equator, even of land, ſeas, and territories not yet diſcovered; except ſo far as they graciouſly condeſcend to admit the Portugueſe title, to a moiety of this ſpiritual fee—It has been found neceſſary, I ſay, in order to meet and obviate this abſurd claim, (exerted in defiance of the rights of mankind, and of the law of nations,) that what would be in all other treaties, *a preliminary* ſhould ſtand actually articled and ſtipulated, in *every* treaty which we have had with that Court, from the year 1667, to the laſt peace of Paris.

In the treaty of Madrid 1667, artic. 3d. you will find it preciſely ſtipulated and agreed, that if any matters of diſpute, or any ſuppoſition even of injuſtice or injury ſhall ariſe, it ſhall *not be carried to force* between the ſubjects of the Sovereigns, but ſhall be referred to the deciſion of the Sovereigns themſelves.*

In the treaty of Madrid of 1670, which was concluded for accommodating differences, preventing depredations, and ſettling peace, between the Crowns of Great Britain and Spain; that peace is particularly guarded, that no acts of hoſtility ſhall be ſuffered to be commenced either by any individuals, or any ſubordinate powers holding under thoſe Sovereigns, without ſuch

* "The ſaid Kings of England and Spain, ſhall take "care that for the future their people and ſubjects reſpec- "tively, ſhall abſtain from all *force*, injuſtice, and violence, "the one towards the other: and if it ſhould ſo happen "*that any injuſtice ſhould be done* by either of the ſaid King's, "or by any of the people or ſubjects of the one or of the "other, either contrary to the articles of this treaty, or "contrary to the rules of equity, and juſtice, there ſhall not "be given out letters of repriſal, or marque, or contra "marque, until juſtice and reparation ſhall have been firſt "demanded in the ordinary way: and if juſtice is deferred "or refuſed, the Sovereign of the perſons injured ſhall re- "peat by more preſſing inſtances his demand either of the "Sovereign himſelf or commiſſaries appointed for that "purpoſe, &c. &c.

ſuch violators of the treaty then made, being conſidered *as criminals reſponſible for a crime*; bound not only to make *reſtitution* and *reparation*, but to be puniſhed as criminals, according to the nature of the offence; in ſhort, without being conſidered in every inſtance as *pirates*, and not as under the protection of their Sovereigns.*

The treaty of Utrecht confirms theſe two treaties, and makes the like proviſions.

The treaty of Madrid of 1721, particularly guards againſt the contravention or breach of the treaties of peace and commerce, by any of

* "The ſaid moſt ſerene Kings are to take care that "their ſubjects *do forbear all acts of violence and hoſtility*, "and to call in *all commiſſions*, letters of marque and re- "priſal, and that they do not otherwiſe give leave to take "any prizes of what nature or kind ſoever they be, to the "prejudice of either of the ſaid two Kings or their ſubjects, "whether they have been given by them to their own ſub- "jects or to ſtrangers, but are to declare them to be null and "void, and of no effect, as they are ſo declared by this treaty. "And whoſoever ſhall act any thing to the contrary, *ſhall* "not only *be puniſhed as a criminal*, according to the nature "of his offence, but ſhall alſo be obliged to make *reſtitution* "and *reparation*, for the loſſes which the injured parties "have ſuſtained and require of them. Particular offences "ſhall no way be a prejudice to this treaty, and cauſe no "enmities and diſſenſions between the two nations; *but* "*every one ſhall anſwer for what he has done*, and be proſe- "cuted for contravening it."

the Governors of Spain preſuming to act upon their own interpretation thereof.*

The treaty of Seville, in 1729, does in like manner particularly provide againſt all acts of diſturbance and hoſtility in thoſe parts, under the moſt rigorous prohibition for preventing the ſame. And the treaty of Paris in 1763, ſpecially ſtipulates againſt any act of hoſtility being committed by the ſubjects of the contracting powers, for any cauſe, or under any pretence whatſoever.†

I come

* "As to what regards the obſervance of treaties of "peace and commerce, circular orders ſhall be diſpatched "to all the Governors of Spain, to the end that they may "*(without any of their interpretations)* cauſe them to be "obſervedand accompliſhed: as in like manner ſhall be "given on the part of his Britannick Majeſty."

† 1729. Art. V. "Although it was ſtipulated by the "preliminaries, that if any trouble or hoſtilities ſhould "happen between the ſubjects of the contracting parties, "either in Europe or the Indies, the contracting powers "ſhould concur for the reparation of damages, &c. Yet "notwithſtanding that, it is alledged that, on the part of "the ſubjects of his Catholic Majeſty *acts of diſturbance and* "*hoſtility* have been &c. &c. It is therefore agreed by the "preſent articles, that as to what relates to Europe, &c. and "as to what relates to America; he will cauſe reparation "to be made, &c. and his Catholic Majeſty ſhall publiſh "*the moſt rigorous prohibitions for preventing* the like vio-"lences on the part of his ſubjects."

1763.

I come now to conſider the manner in which, with the beſt good faith, his Majeſty and his anceſtors have ever executed thoſe treaties and ſtipulations; in which, with the ſtricteſt honour, they have ever governed themſelves by the law of nations. In all delegations of power and government, which his Majeſty or his anceſtors have made to be held, enjoyed, and exerciſed under charters, there is * an expreſs clauſe whereby the Crown of Great Britain binds itſelf to all Chriſtian Princes and States, that it will conſider any perſons acting under that ſubordinate authority, who ſhall commit any violence or hoſtility, to be out of its protection, untill full reparation, to the ſatisfaction of the injured party ſhall be made. In all delegations of power, which his Majeſty or his anceſtors have made, to be held and exerciſed immediately under his commiſſion, the powers granted in that com-

1763. Art. I. "The high contracting parties ſhall give "the greateſt attention, to maintain between themſelves, "their dominions and ſubjects, reciprocal friendſhip and "correſpondence, without permitting, on either ſide, any "kind of hoſtilities by ſea or by land to be committed from "henceforth for any cauſe or under any pretence what-"ſoever."

* Vide charter above quoted.

commiſſion are reſtricted, (by inſtructions * agreeable to thoſe articles of peace) againſt the iſſuing out commiſſions of marque and repriſal, or going into any acts of hoſtility, without the ſpecial command of the Crown.

Matters ſtanding thus in right, upon the law of nations in general, by particular and ſpecific treaties; and thus executed by the good faith of Great Britain, uniformly at all times maintained; I beg to turn the conſideration of the Houſe, to examine how *it now ſtands in fact, on the baſis of this late negotiation.*

The Court of Spain has aſſumed, and does maintain, a right to eſtabliſh what they call their general laws of America. Theſe laws are founded on the pretenſions which they make to a right of dominion to the continent of South America—to the excluſive navigation of the South Seas—and to all lands, iſlands, and territories, that ſhall be found therein, or that ſurround the ſame.—In ſhort, to the whole ſouthern globe, weſtward of their line of dimarkation. Upon this ſuppoſition, they deſcribe in their inſtruments of government theſe their ſuppoſed dominions as extending over the whole expanſe of thoſe climes. They *aſſume it as a fact*, that they

* Vide inſtructions above.

they are in equitable and legal poſſeſſion of theſe imaginary and undefined, nay, even not yet diſcovered poſſeſſions; and that their juriſdiction, as contained in their commiſſions, extends to theſe indefinite boundaries. For the exerciſe of this metaphyſical ſovereignty they have formed laws which they call the eſtabliſhed laws of America; and conformable to this juriſdiction and thoſe laws, they give to their Governors general powers and inſtructions of government. While theſe pretended juriſdictions, theſe laws, ſtand maintained in right, and juſtified in authority; and whilſt the common right of mankind, the law of nations, is thus ſuperceded and repealed in thoſe parts; all attempts of diſcovery in thoſe regions of the globe—all extenſions of commerce—all exertions of any right ariſing from diſcovery and occupancy—all poſts taken—all ſettlements made, by ourſelves or any other European power—muſt be conſidered by that Court as uſurpation on their eſtabliſhed rights; as intruſion upon their actual poſſeſſions; as invaſions of their territories and dominions: and as therefore, the general authorities of the commiſſions which they grant, extend to all theſe claims and pretenſions, and to the exerciſe of this ſuppoſed juriſdiction, their Governors are,

by

by the oath of their office, and by their general inſtructions, under obligation to oppoſe all ſuch uſurpations; to reſiſt all ſuch intruſions; to repel all ſuch invaders; and to conſider the exerciſe of the common rights of mankind in thoſe regions where they (the Spaniards) claim this excluſive juriſdiction, as acts of criminality; and the actors as criminals. It is under theſe pretenſions, they are inſtructed to conſider and to examine all ſhips failing in thoſe parts *without a Spaniſh licence*, as contraband and interlopers; and to prohibit them, both in right and by act from navigating in thoſe parts of the globe.

It was on this ground that Don Bucarelli, the Governor of Buenos Ayres, committed hoſtilities againſt his Majeſty's rights and poſſeſſions in Falkland Iſlands: and it was on this ground that the Britiſh flag was moſt ignominiouſly inſulted.* The Spaniſh Governor, directly contrary to ſpecial treaties, refuſed to refer the matter to his Sovereign; and maintained his right to conſider his Britannick Majeſty's ſervants acting immediately under his commiſſion, and exerting a right of poſſeſſion under the

* Vide letter of Don Ignacia Radariaga, the Spaniſh Commander, to the Captains Farmer and Maltby, 9th June, 1770.

the ſovereignty of Great Britain, as invaders; and to treat his Majeſty's ſhips of war under the Britiſh flag, lying within the poſſeſſions, as interlopers.

Thus ſtands the *act* of the Spaniſh Governor; done under pretended eſtabliſhed laws of America; under the authority of the Spaniſh commiſſion; under the general inſtructions. The Spaniſh Court did not only refuſe to diſavow *this act*, but has in the late negociation juſtified it on theſe very grounds. What they, upon the ground of juſtice, maintain they had a right to do *in general*, they condeſcend, upon the ground of favour, to acknowledge that they had not given *particular* orders ſhould be done in this particular inſtance.

This is the diſavowal they have made; and, ſhame to our * negociators! this is the diſavowal which we have accepted. We demanded *juſtice*

* By the word *negotiators*, neither the Secretary of ſtate who ſigned the convention, nor Mr. Harris our Miniſter at Madrid, muſt be here underſtood.

The firſt has acted throughout, with a ſpirit becoming a Britiſh Miniſter, grounded on a knowledge of foreign ſyſtems, which does him honour, and his country ſervice: the very extraordinary preciſion and prudence, with which that very young man, Mr. Harris, acted on ſo critical an occaſion, is not more meritorious than it is uncommon.

By *negotiators* here and throughout, muſt be underſtood, that Cabinet which conducted the *interior*, *not the official*, the *French*, *not the Spaniſh* part of the negotiation.

—our negotiation has lowered us to accept *a favour*; and that favour is both an inſult and a ſnare.

By ſuffering the Spaniſh Court to enter this poſition into any negociation; by *convening* with them under any ſuch illuſory diſavowal, our negotiators, as far as in them lay, have gone to acknowledge theſe vain claims; have recognized theſe rights; and before there is an end of this buſineſs, they will find claims and demands founded on this *recognition*.

His Majeſty gave orders, that they ſhould demand a diſavowal of the *act* of the Spaniſh Governor; and declared, he would invariably adhere to that demand. The diſavowal ought to have gone to the putting that Governor in the predicament of puniſhment: for, though it were beneath a great nation to exact the actual execution of ſuch puniſhment, yet it was neceſſary (in order to obviate, contravene, and deſtroy theſe ſtrong pretenſions and claims) that *that act* ſhould be conſidered as not done or juſtified under the protection of the Crown of Spain, and therefore as an act of criminality. But ſo far from that, the negotiation has permitted the Spaniſh Court to juſtify this Gover-

nor

nor in thus commencing hoſtilities, in execution of his *general orders*. So that if any new rights or claims could ariſe, or any new grounds could be given to old, obſolete and rejected pretenſions, from the courſe of this convention, his Majeſty's rights and poſſeſſions, and the Britiſh navigation, would be delivered up expoſed to ſuch Spaniſh claims and pretenſions.

To permit the Spaniſh Court, to reaſon upon any ſuch grounds—to admit any ſuch *data* in negotiation—not to obviate by any contravention or proteſt, theſe poſitions and doctrines was, as far as was in the power of Miniſtry, in effect to recognize theſe claims and pretenſions—to give up the Britiſh right to Falkland's Iſland,—and to diſclaim all right in us, to make any ſettlement in thoſe parts: and whatever may be the preſent oſtenſible form of the convention, mark well the end—It will end on our part **either in the actual ceſſion of the*

* As the cabinet under whom an ingenious and literate * author wrote, were the ſuggeſtors of *thoſe thoughts* to which he, by the brillancy of his language, has given ſome form and ſpecioufneſs; as they have acceſs to the office papers of government; as they ought to be, nay, *muſt be* poſſeſſed of official information enough to know the true grounds of the *Britiſh* right, and the baſeleſs ſtructure of the *Spaniſh* claim;

the iſland, or *in a gradual direliction of it.* Without ſome ſuch idea as this; namely, that as ſoon as reparation is made to our honour for the violent and hoſtile manner in which we were driven

to what can the world impute, their ſuffering a pamphlet, written under their patronage, to be publiſhed at ſuch a time; to diſcredit and diſclaim the Britiſh right; and avowedly to betray the cauſe in the hour of trial? Thoſe who wiſh an anſwer to this queſtion, will find it not barely in the impatience of indignation which breaks out in clamors, but in the ſilent and deeply impreſſed ſentiments of men, which lye in ſtore for vengeance: they will find all unanimouſly thinking, that as our wretched *Cabinet* mean to betray this cauſe, and to give up this iſland; ſo this pamphlet is written in order to prepare the nation for, and to reconcile it to this meaſure. The ſolid, rational ground of the *Spaniſh title*, compared with the doubtful, hypothetical, preſumptive title of Great Britain, is the firſt argument in this ingenious piece of compoſition. If the Cabinet meant honourably to their country, they could have ſupplied the writer with far other arguments and documents. The next argument is drawn from the futility and inutility, on any grounds of juſt policy, of making any ſettlement or taking any poſt on *ſuch an iſland*. Our Cabinet muſt know, that it is not the value of the iſland, but the importance and extent *of the queſtion inſeparably connected with it* which ought to be the baſis of their negotiation. Thoſe who attend to the intereſt of their country, muſt look to the rights of commerce and navigation: thoſe who mean to betray it, will point their view ſolely to this *barren rock*, this neſt of ſea fowl, this den of ſea lions: in this view, the lively colouriſt whom they have employed, paints to the purpoſe.

* The author of a pamphlet entitled, Thoughts on the Tranſactions concerning Falkland's Iſland,

driven off that iſland, and as ſoon as we were put in a ſituation to evacuate it of our own motion, *its tacitly underſtood we are to cede it*—Without ſome ſuch idea as this; the whole of the negociation is inexplicable and unintelligible —but taking this line, as going to a matter mutually underſtood, the whole is plain, definite, and but of one conſtruction.

In like manner, as the immediate operation of this negociation, affects our actual ſettlements already made, ſo likewiſe muſt its effect extend itſelf to every poſſeſſion, to every ſettlement, which by the law of nations we have *a right to make.*

His Majeſty, under a great idea of extending our commerce and navigation, has given orders for the making diſcoveries in the ſouthern parts of the globe. Diſcoveries have been made, in conſequence thereof; and a right of poſſeſſion affixed thereto, by thoſe rules, which the law of nations admits to give ſuch right.

Poſſeſſion, in that form, has been taken, of land called *George's-land.*—But if the doctrine held out in the late negotiation is to be admitted in our diplomatic code, we then have no right to take any ſuch poſſeſſions, under ſuch diſcoveries: the very act of occupancy

which

which ought to aſcertain it, would become an act of invaſion and hoſtility; and our ſhips, preſuming to navigate in thoſe parts, on any ſuch pretence, would become contraband and interlopers.

If this doctrine be admitted, the charter of incorporation granted to the South Sea Company, by which the Crown conveyed to it a right of being * "ſole owners and proprietors of "all the iſlands, forts, towns, and places which "they ſhall hereafter diſcover within their limits; "to hold the ſame by fealty of the Crown of "Great Britain, in free and common ſoccage;" *is ab initio* a nullity.—The moment that the Spaniſh Court, or any Governors acting under it, ſhall put this pretended Spaniſh juriſdiction in actual claim, the Britiſh right would be annihilated.

By this doctrine (if it be admitted) the charter of the Eaſt India Company will alſo become bounded and reſtricted by the Spaniſh claims. A caſe which I referred to, the other day, when I wiſhed to have the papers reſpecting it laid upon your table (turning upon this very point) is now in actual agitation: It is the caſe of the ſettlement intended to be made upon the iſland of *Ballambangan.*

* 9. Ann. c. § 50.

gan. This iſland is a dependency of the dominion and ſovereignty of *Zoloo*; and was granted to the Eaſt India Company by the ſovereign thereof. *The Spaniards ſay*, that the ſovereign and dominions of *Zoolo*, are dependencies of the province and *audience* of Manilla. When the Eaſt India Company firſt intended to make a ſettlement upon ſome of the iſlands belonging to ſome of theſe dominions; the Archbiſhop and Governor of Manilla, in the year 1764, entered a ſolemn proteſt againſt the enterprize, as an intruſion upon the Spaniſh rights and dominions.

The Eaſt India Company have from that time to this, kept a trading ſhip in thoſe parts; but as yet, have not made any actual ſettlement there. There is an expedition now prepared, and ready within a few days to proceed to take poſſeſſion of that iſland, and to make an actual ſettlement upon it: and I underſtand that his Majeſty's Commodore has orders to protect thoſe rights, and that ſettlement. * As in the caſe of Falkland Iſland; no notice has been taken

* There is ſomething *critical in the fact*, whatever may be *the cauſe* of it, that the Eaſt India Directors, ſince this matter was thus taken notice of in Parliament, have diſmiſſed from his

taken in Europe, by either the Britiſh or Spaniſh Courts, of what has paſt between the Eaſt India Company and Governor of Manilla. According to the doctrine held by the Court of Spain in the caſe of Falkland Iſland, reſpecting the juſtification of their Governor of Buenos Ayres; the Governor of Manilla will be juſtified in reſiſting thoſe rights, and in driving the Eaſt India Company, by force from theſe poſſeſſions.

If he has (as the Governor of Buenos Ayres had) a force ſuperior to what his Majeſty's Commodore and the Eaſt India Company, may have there, the honour of his Majeſty's Crown, and the rights of his people, will be deeply affected—the honour of the Britiſh flag, will be again inſulted.

If

his command the gentleman who was to have had the execution of this expedition, which he planned; and have not yet fixed upon any other. If it ſhould be too late at this ſeaſon to proceed in it, if this Manœuvre ſhould fruſtrate this expedition and if there ſhould be any truth in ſome whiſpers which have circulated, that *private* application of *public perſons* have been the cauſe which led to the fact before-mentioned, what muſt the world think of the ſtate of our government, both as to knowledge and ſpirit; when it does not care to ſuffer the greateſt trading company in the world, to proſecute one of the moſt beneficial eſtabliſhments of commerce which could have been made; becauſe the adminiſtration of that government neither knows the ſtate of its own rights, nor dares to aſſert them?

If this doctrine be admitted, that the Spaniards have a general right to the dominions of America, except where we can ſhew a poſitive right of poſſeſſion, preciſely defined by treaty; the Spaniſh Governors, by the general laws of America thus admitted, under the general authority of their commiſſion and inſtructions thus explained, will conſider themſelves as having a right, to drive us off by force from every place that may be diſputed, and to fix on their own parts an actual poſſeſſion previous to all reference: leaving the Britiſh ſubject to ſeek future redreſs, by future negotiation. The Spaniſh Governor, claims a right to uſe force—The Britiſh ſubject has no right left, but that of complaint.

Let us now apply this doctrine, to the actual caſe of the boundary of the Florida's. The weſtern limits of Weſt Florida which now bound upon the Spaniſh dominions, are by the 7th article of the peace of Paris, deſcribed by a line drawn along the middle of the river Miſſiſippi from its ſource, to river Ibberville; and from thence by a line drawn along the middle of that river, and the lakes Maurepas and Ponchartrain, to the ſea: and *in conſequence of that*, the French ceded to the Crown of Great Britain

every thing which they poſſeſſed or ought to poſſeſs *on the left ſide* of the river Miſſiſippi; except the town of New Orleans, and the iſland in which it is ſituated. I dare ſay every body who hears me, (having been accuſtomed to take a map the right end upwards,) does underſtand *by the left* the weſtern ſide of the river. But our negotiators, who treated with the map the wrong end upwards, underſtood the eaſtern to be the left ſide of the river.

The commiſſion to the Governor of Florida, marks the boundary of that province to the weſtward, by the lake Ponchartrain, the lake Maurepas, and the river Miſſiſippi.—Under theſe indefinite deſcriptions, let us conſider what the ſtate of this boundary, between the Spaniſh and Britiſh dominions is.

In the firſt place, the line of dimarkation runs along the river Miſſiſippi, and the river Ibberville; and yet every thing *to the left* of the Miſſiſippi, except New Orleans and its iſland, is ceded to Great Britain. There are many other iſlands *on the left* of the river Miſſiſippi, which are on the right of this line of dimarkation, and which conſequently lye between theſe two lines.—Will any one ſay that the treaty of Paris does in any definite way aſcertain

certain to whom *theſe* belong? the commiſſion to the Governor takes no notice of *them*; and yet undoubtedly by the whole tenor and purport of that treaty, they do belong to Great Britain: They are actually by that treaty ceded to Great Britain; and yet they are, in the language of that treaty, *on the right* hand ſide of the line of dimarkation; or in the language of common ſenſe, to the weſtward and ſouth-weſtward of that line.

Now many caſes may ariſe in which it may become neceſſary to take poſt, or make ſettlements *on ſome of theſe iſlands*, in order to maintain (to the full of our right) the actual exerciſe and enjoyment of the navigation of the river Miſſiſippi. The moment that we ſhould do ſo, if ſuch poſt or ſettlement ſhould become an object of jealouſy to the Spaniſh Governor at New Orleans, he would undoubtedly, under the influence and authority of the doctrine as above explained, reſiſt ſuch ſettlement, and drive us from ſuch poſts, quoting againſt us *our admiſſion* of the general orders, ſupported in the negotiation relative to Falkland Iſland; and leaving us to make out by treaty our preciſe and actual right to the territory whereon we made ſuch ſettlements. Are

then his Majeſty's rights and poſſeſſions ſecured by this late negotiation and convention? Are they not, on the contrary, actually expoſed, and liable to be diſturbed, under theſe Spaniſh claims and pretenſions?

This doctrine, thus explained, applies in like manner to the eaſtern boundaries of Florida. His Catholic Majeſty, by the 20th article of the ſame treaty, "cedes and guarantees to his Bri-" tannick Majeſty, Florida, with all that Spain " poſſeſſes *on the continent of* North America, " * *to the Eaſt or to the South Eaſt of the river* " *Miſſiſippi*; and in general every thing that de-" pends on the ſaid country and land, with " the ſovereignty, property, and poſſeſſion of " all rights acquired by treaties or otherwiſe, " which the Catholic King and Crown of Spain " have had till now over the ſaid countries, " lands, places, and their inhabitants."

There is no doubt but that the purport and ſpirit of this treaty went to the ceding all iſlands adjacent to and connected with this province: and yet as the language of this treaty does, in other parts, where iſlands are ceded, actually mention and ſpecify them; as in the fourth article

* *Not on the left hand.*

ticle, where Canada with all its lands, *iſlands*, and coaſts, and with all that depends on thoſe lands, *iſlands* and coaſts, is ceded; Can any one ſay, whether preciſely and definitively, the iſlands, which form the ſouthern point of Cape Florida, *are now the actual property* of Great Britain?

In like manner, as I ſaid before of the weſtern boundaries of Florida, ſo I will remark upon theſe; that many caſes may ariſe wherein it may become peculiarly proper to take poſts and make ſettlements on ſome of thoſe iſlands. It is known to all navigators, that to ſhips coming out of the Gulph of Mexico into the Atlantic, the only paſſage is through the Gulph of Florida; and that the Havannah, lying on the eaſtern or ſouth eaſtern entrance of this Gulf, does in a great meaſure hold a command over this navigation. There may come times, from various circumſtances, when it may be not only proper but even neceſſary, for the protection of our commerce, and for the maintaining the communication between our provinces, to counteract and guard ourſelves againſt any command which may intercept the free navigation of thoſe ſeas. Under ſuch circumſtances, were we to make any ſettlements, or take poſt on any of the iſlands here

referred

referred to; and ſhould the doctrine, held forth by the Spaniards in this negotiation, be admitted to influence and operate to the extent to which they claim, the Spaniſh Governor of the Havannah would, in like manner as the Governor of Buenos Ayres did, find himſelf juſtified under his oath of office, his general inſtructions, and their eſtabliſhed laws of America, in driving us off by force from lands and territories to which we could not make out a *defined right of poſſeſſion.*

If this doctrine be admitted *that Spain has a general right to the dominions of America, except where we can ſhewa poſitive, preciſe, and defined right of poſſeſſion*; and if this doctrine thus explained, is to be applied to our rights in the Bay of Honduras, the rights of the Britiſh ſubject dwelling there, for the purpoſe of cutting logwood, are held under the arbitrary interpretation which a Spaniſh Governor may give to thoſe general laws of America, as recognized by this convention, and not under the ſpiritofthe treaties by which we had thoſe rights confirmed to us: and that cauſe and queſtion which has been ſo many years agitated, and which was the ſource of the war of the year 1739, is again (notwithſtanding the caution taken in the treaty of

Paris)

Paris) opened to all its miſchievous conſequences.

The courſe and dangerous tendency of this negotiation; the claim of an excluſive American navigation to the ſouthward of the Equator; the inadmiſſible pretence that we have no right to ſail or navigate in thoſe parts, without the licence and permiſſion of his Catholic Majeſty, was in all form, both of warning and denunciation acted upon by the Spaniſh Governor and Commander; it was exerted as a right, being neither contravened nor proteſted againſt in the negotiation: it ſtands recognized as far as the conduct of our Miniſters could give it force; and that great ſource of war between the Crowns of Great Britain and Spain is therefore by this negotiation again laid open in its utmoſt extent, after having been ſettled and determined almoſt an hundred years ago.

If I was aſked what anſwer I would give to thoſe Spaniſh claims founded on a right at leaſt as good as any other nation can ſhew, I would not hurt this cauſe by giving an anſwer derived from my own opinion, which could have little weight in ſuch a caſe, but I will hold forth to our preſent Miniſters, the lan-

guage

guage which the Britiſh Miniſtry itſelf, in ſimilar circumſtances, found it neceſſary to hold, and therefore held; and which I believe will be an anſwer, not only from its authority but from its reaſon, not very eaſily refuted: I take it from the memorials that paſſed between the Courts of Great Britain and France, concerning the iſland of St. Lucie, and it is to this very point, as follows:

"It would be a very extraordinary and dan-
" gerous doctrine and example, if it ſhould be
" admitted, that the bare inſertion of general
" words and deſcriptions of any general latitude,
" into any inſtrument of government, ſhould
" (according to the law of nations) convey to
" any people a right in all ſuch lands and terri-
" tories unforeſeen and undiſcovered by that
" people at that time, as ſhould afterwards be
" diſcovered and ſettled by other nations in the
" ſame latitude. Happily for the peace of
" mankind the law of nations has provided
" againſt ſuch uncertainty by marking out to
" us what act ſhall be deemed to be ſuch poſ-
" ſeſſion as confers a right.*" If

* Regulare eſt, ut occupatio rerum mobilium fiat manibus, rerum ſoli pedibus, vidiſſe autem tantum aut *ſcire quid ſit*, nondum ad poſſeſſionem ſufficere judicatur.

Puffend. lib. 4. §. 6.

Primus

If it ſhould be ſaid, that however juſt my reaſoning would be, if the ground whereon I ſtate it did exiſt in fact, yet that it is in the very ground of it without foundation: That the Spaniſh Government does neither give, nor do we acknowledge them as giving, in this caſe, any other powers and inſtructions than what all the Britiſh Governors have from their Sovereign, namely, to oppoſe intruſion, to remove uſurpations, and to repel invaſions. I will, in hopes that candor and reaſon may meet in this argument, mark the eſſential difference between an inſtrument of government which is given *for the ruling and protecting* a right already exiſting, and an inſtrument of government formed expreſsly to *create a right*. The powers and inſtructions of the Britiſh Governors operate only where there is an actual poſſeſſion founded upon undoubted and acknowledged right; but the powers and inſtructions of the Spaniſh Governors go to the *creating of ſuppoſed rights, merely by their being inſerted in their commiſſion*;

Primus acquirendi modus, qui juris-gentium a Romanis dicitur, eſt occupatio eorum quæ nullius ſunt.

Grotius. lib. 2. c. 2.

Inſula quæ in mari * nata eſt (quod rarò accididit) occupantis ſit, nullius erim eſſe creditur.

Inſtituti. lib. tit. 1. §. 22.

* Priority of diſcovery makes the ſame caſe.

without any of thoſe acts of diſcovery and occupancy which the law of nations has fixed as the acts which create a real right. Their inſtructions go to the exerting of power and force in ſupport of ſuch ſuppoſed rights, where there is not, in fact, any actual right at all; or where nothing yet has been done according to the law of nations to take it out of diſpute. If the force of this diſtinction is not acknowledged, then it is not only admitted in negotiation, but avowed in debate here alſo, that the Spaniſh rights extend to the full extent of their claims, and that their juriſdiction ought in right, as it did in this caſe in fact, to operate to the full of their powers and inſtructions; and is rightly founded in the eſtabliſhed laws of America.

Upon the whole, his Majeſty's Miniſters having neither objected to, nor contravened; having neither proteſted againſt, nor even demanded an explanation of, theſe claims and pretenſions; but having ſuffered the Court of Spain to argue the principle upon which they are built, and to juſtify their Governors in acting under them, theſe Miniſters have acknowledged, and ſubmitted to, dangerous poſitions and deſtructive doctrines; have expoſed as far as their negotiation could do, his Majeſty's rights and poſſeſſions; and rendered them liable to be diſturbed on ſuch pretenſions.

If

If it were in my wiſhes or intentions to go into matter of crimination, the ground on which this buſineſs ſtands would ſupport me. But in the ſituation in which this country is, every well-wiſher to it will rather aim to prevent or remedy evils, than to inflame the ſenſe of men againſt them; would rather chooſe a meaſure of remedy, which may unite us in the intereſt of our country, than any thing which is vindictive, that would divide and diſtract. The motion therefore which I ſhall take the liberty to make, marking the defect, points ſolely to the remedy.

EXTRACT from the VOTES. N°. 57.

THE MOTION.

Martis 5° *Die Martii*, 1771.

THAT in the late negotiation with the Court of Spain concerning Falkland Iſland, his Majeſty's Miniſters, having neglected to demand an explanation of the oath of office taken by the Spaniſh Governors in America, their general orders, and the eſtabliſhed laws of America under which theſe Governors pretend to act, and under which the Court of Spain doth pretend to juſtify them in commencing hoſtilities, his Majeſty's rights and poſſeſſions in America remain thereby expoſed and liable to be diſturbed by the ſaid Governors, under pretence of ſuch oath of office, their general orders, and the eſtabliſhed laws of America.

paſſed in the negative.

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